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No. _____

In the

SUPREME COURT OF THE UNITED STATES

TEJAN TARAWALY.

Petitioners,

vs.

WARDEN CATHERINE FERREY

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES FEDERAL COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI

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38 pp

QUESTIONS PESENTED FOR REVIEW

1. Can the Federal Court of Appeals deny Petitioner's petition based on the opinion of the District Court that Petitioner's argument is frivolous, which will be proved to be wrong?

2. Is it constitutional for Hart's claim with which Petitioner was charged under Case Nos. 92-CF-1829 and 93-CF-648 that were dismissed with prejudice, would the same charges, the same elements of offense 49.49(1)(b) be reproduced against Petitioner in Case Nos 96-CF-414 and 96-CF-415?

3. Is it constitutional for Mr. Anderson's two claims with which Petitioner and his corporation were charged under Case Nos 92-CF-1829 and 93-CF-649, and dismissed with prejudice, be reproduced against Defendants in Case Nos: 96-CF-414 and 96-CF-415, in violation of the Fifth and Fourteenth Amendments due process?

4. Is it constitutional for the State to have charged Defendants with single individual claims less than $400.00 but turns around and demands all payments made for the services between 1990 and 1992 over $256,000 in violation of State v. Mattes, 175 Wis. 2d 572, 499 N.W. 2d. 711 (Ct. App.1973) pertinent to restitution?

5. If the State had brought all Schneiter's claims to a single unit of $4,285.39 as well as Sydow's $8,411.52 and lost both in Case Nos: 92-CF-1893, 93-CF- 648 and 649 with prejudice, would the Defendants be prosecuted for the same charges and same elements of offense in Case Nos: 96-CF-414 and 96-CF-648 contrary to the Fifth and Fourteenth Amendments of the Constitution?

6. Is it constitutional for a Petitioner to be charged for a single claim with two counts of the same statute 49.49(1)(b) that are not closely related offenses?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES FEDERAL COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Petitioner, Tejan Tarawaly respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on January 12, 2000.

OPINIONS BELOW

The opinion of the United States Federal Court of Appeals for the Seventh Circuit dated January 12, 2000 affirming the opinion of the United States District Court for the Western District of Wisconsin is unreported. The opinion of the Federal District Court for Western District by Chief Judge Shabaz, dated April 23, 1999 dismissing Petitioner's Habeas Corpus 28 U.S.C. 2254 is unpublished.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit delivered its decision on January 12, 2000 affirming the opinion of the United States District Court for the Western District. Therefore, the District Court is promulgated by 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The case involves the Fifth and Fourteen Amendment of the United States. The Double Jeopardy Clause of the Fifth Amendment guarantees that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." The prohibition of jeopardy applies not only to "life or limb" but also to prison sentences and criminal fines as well. Jeffers v. U.S. 432 U.S. 137, 155 (1977).

STATEMENT OF THE CASE

In February, 1990, the State of Wisconsin contracted with Petitioner's corporation, Tejanco, to transport Medicaid recipients, such as the elderly, the handicapped and the sick to and from clinics in the State of Wisconsin.

The corporation transported more than 300 recipients between February, 1990 and May, 1992, and submitted more than 5000 claims, for which the State allegedly reimbursed the corporation $256,000.

When the State, which became suspicious of Anderson's two claims, asked for his records in April, 1996, and the records were accordingly given. Whether or not there was a discrepancy, the State could have contacted its contractual partner to reconcile matters, but it did not.

On June 4, 1996, a massive raid was executed in Petitioner's home and office in his absence by 12 State officials. In the raid, they confiscated his records and computers, which were never introduced into evidence, nor have they been returned to Petitioner to date. Instead they carried his records and computers where he stored his doctoral work, which was not introduced into evidence, nor have they been returned to date.

THE HONORABLE SARAH O'BRIAN'S COURT.

Six months after the raid, Petitioner and his corporation were jointly issued with 8 felony counts under Case No: 92-CF-1829 allegedly defrauding $256,377.17 for services rendered more than 300 recipients between February, 1990 and May, 1992. During the period, the State blasted Tarawaly and his corporation in the Associated Press that his corporation stole more than $256,000. As God stands behind the truth, the Honorable Sarah O'Brian dismissed all charges for insufficient evidence.

THE HONORABLE JUDGE CHARLES JONES' COURT.

Six months later, the same old charges, same elements of offense, Statute 49.49(1)(b) in 12 felony counts were reproduced, charging Defendants with $250,000. The Honorable Judge Jones, a strong believer in God and justice, declared the case a mistrial. The State conceded the defeat in its brief and asked the Jones' Court to dismiss all charges against the Defendants. Consequently, the Court dismissed both Case Nos: 93-CF-648 and 93-CF-649 with prejudice.

It is also worth noting that because Tarawaly and his corporation were triumphant in their struggles for justice, Prosecutor Juan Colas had become so desperate that it took

him fifteen months looking for a judge who would condone his hate crime prosecution to continue harassing Petitioner. Luckily for him, he found one in the person of Chief Judge Daniel Moeser of Dane County, a very powerful and influential man. To destroy Petitioner, 7 felony counts were filed against the corporation and 9 felony counts with 2 theft by fraud were levied against Tarawaly.

THE CHIEF JUDGE DANIEL MOESER'S COURT.

Petitioner, who was trying to rebuild his ailing corporation and his business was dragged into court to answer the same charges and elements of offense that were already dismissed by two intellectual judges. Here was a plot. Judge Daniel Moeser made sure that he recruited the jury perhaps from his own constituency. Among them, were State auditors, relatives of Dane county police, correctional officers, and above all, a lady who was Prosecutor Juan Colas' high school classmate friend. Having recruited the jury, dead sure of the out come of the case, he flatly denied Petitioner's double jeopardy motion, and assigned the case to his friend, a Sauk County retired Judge Robert Curtin on June 19, 1996, who later heard the prosecution's motion of lemine and granted it, barring the Defense from cross-examining prosecution witnesses about their drug habits, "because it would spoil the witnesses' credibility as drug users."

> "The Court: I am guessing, but frankly when I hear that someone has received methadone treatment, my reaction is that they have been drug addicted and that's the reason they are given methadone. If that is the case, then I suggest that if the witnesses is embarrassed by the referring to the fact that they received methadone and that they are possibly drug addicts, it might raise a question as to their credibility in front of the jury, and I do not think it's appropriate. So if you want a ruling on it, yes, there will be no reference to that fact that the clinics they went to, that

they received methadone," See page 5 of transcript June 19, 1996.

In contrast, "In People v. Garfield, the trial court had granted the state's motion in lemine preventing the defense from any mention during the trial of defendant's intoxicated state or drugged condition. By this order the reviewing court held that the trial court had deprived defendant of raising a valid defense to the charge. The motion should be used with caution particularly in a criminal case where the granting of a motion in lemine would have the effect of preventing an accused from raising a defense." People v. Garfield 72 III. App. 3d 107, 390 N.E. 2d 612 (1979).

That meant, the Court willingly violated the 6th Amendment by not allowing the Defense to confront the witnesses through cross-examination. After the three-day trial ended in the afternoon of June 21, 1996, the powerful Chief Judge Moeser majestically appeared, released Judge Curtin, and sat to receive the verdict himself with a smiling face. Judge Moeser, having received 18 count guilty verdict, thanked the jury for being good citizens, and assigned the sentencing back to Judge Curtin for October 29, 1996. One has to wonder why Judge Moeser would come to show his presence to the jury rather than allow Judge Curtin to receive the verdict.

Despite Petitioner showing the inaccuracies in the presentencing writer's report, the judge himself affirmed that he was not given any criminal records of Petitioner. In spite of the presence of Petitioner's referees who spoke in favor of the Defendant, among them were accountants, doctors, engineers, lawyers, and school teachers, the Petitioner was thrown in prison, first crime ever accused of in 29 years in America as if he was a murderer, irrespective of the Defense motion for a 60 day stay to secure his Wauwatosa home.

PROSECUTOR COLAS USES "RACE CARD"

These were the tactics played by the Prosecutor before the verdict, playing the "race card" by reminding the jury, "...BOTH MY PARENTS ARE SPANISH." Then he goes on bluffing the jury by begging them:

> "You have sat here two days listening to testimony. You sat very graciously through and hour and 20 minutes of my argument, and in that time, we have not gone through these exhibits enough," knowing perhaps almost all the jurors are Dane County residents and workers, Colas continues, "if the State has not explained them clearly enough, if I have not explained them clearly enough in my closing, if the witness testimony wasn't enough," Colas cried to the jury, "then I apologize for that." Transcript June 21, 1996.

Petitioner sincerely appeals to the Supreme Court of the United States with all the Powers Invested in the Justices by the Constitution to bitterly discourage this sort of racial game. The jury knew that Colas was a white man and Petitioner was a black man. Therefore, it was needless for the Prosecutor to stress color lines to buy votes. Hence, the Jury has a constitutional duty to perform.

After all, it is understood that every criminal case is a contest between an individual defendant and the powerful government. The prosecutor in a criminal case is always the government, who perhaps inevitably sides with the government. Hence we do not have a private justice. Doubtless to say that a crime is by definition an offense against society even though the victim is an individual, who needs a fair treatment of the law from the same government that makes the law, makes the arrest and prosecutes. Injustices are inevitable unless the Justices take a strong stand against deceptive prosecutors, and take a neutral

position to administer justice. Considering the power of the State in a given case, it is an unequal contest because the parties involved are of unequal strength. Again if this unfortunate disparity is not carefully monitored by the Supreme Court of the United States, injustices cannot be avoided, especially when inequality begets injustice. Thus, if a prosecutor has a clear cut case, he must pursue it to the fullest extent of the law. But if he does not, he must not employ tricks to incarcerate the innocent. This is all the beautiful Rule of Law accorded by the Framers of our Constitution called for, and nothing else.

In prison, Petitioner's appellate lawyer filed a motion for release pending appeal. Chief Judge Moeser presided over it, and without regard for the 8th Amendment, he approved the motion for bail, but effectively denied it by imposing a $100,000 cash bond, when the restitution was only $10,000. Petitioner filed motions for a public defender and to be transported to Madison, only a ten minute drive, to inspect records for his case, but the request fell on deaf ears. Because the Petitioner could not get a public defender, he wrote to the Court of Appeals and notified them that he would work on his case until a public defender was assigned to eradicate the constant threat of throwing the appeal case out of court. Petitioner filed a motion to the Court of Appeals for bail reduction, but the request was called "untimely". Petitioner received no records from the State. The Petitioner hopes he is not penalized for this brief exposition which explains how justice works in some Wisconsin courts.

Petitioner did not even want to discuss the jury trial. But because Shabaz brought the jury trial in, he automatically invited the Petitioner to comment on the jury trial as a result of the following:

> "On June 21, 1996 after a jury trial Petitioner was convicted of nine counts of medical assistance fraud and two counts of theft by fraud, he was sentenced to

a total of eight years in prison and placed on two ten-year probation terms concurrent to each other but consecutive to his prison sentence. Petitioner has exhausted his State Court remedies." See Shabaz's order dated April 23, 1999 (See Appendix)

Considering the above, how could the jury not convict the Petitioners?

Having exhausted all State remedies, Petitioner filed a writ of Habeas Corpus with the Federal District Court in Madison. Shabaz denied the petition with prejudice. Considering the powers of the Chief Judge in Madison, it can be understood if we consider the statement of the New York Chief Magistrate:

"He is the most important in the city. He has more opportunities for evil or good in a week than a judge of the Supreme Court in a year... He can curb disorder or encourage it; he can be a terror to evil-doers or an ally. The Magistrate must be free from ulterior influences and his integrity should be unquestioned as that of the judges in our very highest court." William McAddo, Report of the New York State Bar Association, Vol. 43, pp. 415, 416 (1920).

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Immediately after the District Court Judge Shabaz dismissed Petitioner's petition on Habeas Corpus with prejudice, he asked the above Court to issue him with a Certificate of Appealability. But Judge Frank H. Easterbrook, and Judge Daniel A. Manion, denied the Petitioner's request on January 12, 2000, as follows:

"This Court has reviewed the final order of the District Court and the record on appeal. We find no substantial showing of the denial of a constitutional right." See 28 USC

#2253(c)(2). "...Accordingly, the request for a Certificate of Appealability is denied."

Petitioner finds the above judgment unconstitutional in that Shabaz's "order" lacked the merit of the Blockburger Test, not to mention his failure to correctly define the Fifth Amendment of the Constitution.

Judge Shabaz thought that the Fifth Amendment of the United States Constitution prohibits placing a Defendant twice in jeopardy for the same charges, when in fact the Fifth Amendment actually prohibits placing the defendant twice in jeopardy for the same offense, and it is this which protects the Petitioner's constitutional right. Shabaz's confusion between a "charge" and an "offense" is evidence that he did not understand the Blockburger Test. If he had, he would not have presented the 15-digit claim numbers, but rather he could have used the STATUTORY ELEMENT OF OFFENSE, because the Blockburger Test has nothing to do with claim numbers. Given the above, the Federal Court of Appeals was not justified to base its denial on Shabaz's "order", which was undoubtedly premature.

It was deplorable for the two judges to say that, "Petitioner's constitutional right was not violated." Did the two judges dispute the O'Brian and the Jones' Court decision to dismiss the charges with prejudice? If they truly read Shabaz's Order and Record, they could have approved the Certificate of Appealability by viewing the State of Wisconsin's recommendation to dismiss the 1994 charges. Was the denial of a certificate therefore in violation of Petitioner's due process? In addition, if they had closely read Petitioner's Master Chart on Anderson's, Hart's, Schneiter's, Sydow's and others, could they not have seen the willful duplications and fallacies in Shabaz's order?

REASONS FOR GRANTING THE WRIT

1. THE WRIT SHOULD BE GRANTED BECAUSE THE DENIAL OF THE PETITIONER'S CLAIM BY THE UNITED STATES FEDERAL COURT BASED ON THE ORDER OF THE DISTRICT COURT WAS NOT EVIDENTIARY.

THE FEDERAL DISTRICT COURT CHIEF JUDGE SHABAZ FOR THE WESTERN DISTRICT, MADISON.

To demonstrate Shabaz's defiance, instead of furnishing the statutory element of offense, which differentiates one crime from another, he logged these redundant 15-digit numbers from the Moeser's Court: : 249890225353460, 249890225353060, 249890225353960, 249890225255450, 229890225354370, 249890225353990, 249890225353650, 241392092028140 and 24139136109310, which undoubtedly fall below the analytically scientific Blockburger Test, which is favored by almost all leading intellectual Justices since 1847. But here are perhaps, some people who are not quite abreast of the historical Blockburger Test and call it a joke because they can trash the test and throw the poor into prison regardless of the law, not realizing that those amendments were passed by Congress to liberate the poor from harassment and torture.

If one reads the State's indictments, one would see not only how confusing they are, but also how they spread over Petitioner and his corporation.

A case in point we cite Anderson's two claims. In the State's response to Judge Shabaz, it presented the argument below:

> "The counts themselves also are not multiplicitous because each requires proof of different, additional facts. In count eight, the State alleged that, on February 18, 1992, Petitioner knowingly submitted a claim for transporting an individual who was not

eligible for SMV transportation. In count nine, the State asserted that on December 27, 1991, Petitioner submitted a claim for payment stating that he had transported an individual when in fact, he had not. The false statement alleged and proven in each of these charges is a different false statement, independently punishable under Wisconsin Stat. 49.49."

In the listing of cases starting on page 12 below, Anderson's two claims were dismissed by the O'Brian's Court. It was also dismissed by the Jones' Court with prejudice. Hart's claim was dismissed with prejudice. Therefore, there was absolutely nothing left for the 1996 prosecution. Petitioner could go on and on proving the duplications of other recipients' claims. Considering the State's repeated notorious actions,

> "An Act, which prescribes different punishments for the same act, and thereby purports to authorize Prosecutor to charge one person with felony and another with misdemeanor for the same act committed under same circumstances, denies equal protection of law guaranteed by the Fourteenth Amendment of the United States Constitution and by the constitution of Washington." Per Rosellini, with Chief Justice and two Justices concurring and four Justices concurring in result, State v. Zornes, 469 P. 2d 552, May, 1970.

2. THE WRIT SHOULD BE GRANTED BECAUSE THE UNITED STATES SUPREME COURT JUSTICES CANNOT AFFORD TO SHOULDER THE ABUSES OF OTHER JUDGES SELLING JUSTICE FOR INJUSTICE, FOR IF THEY NEVER HEAR IT, WHO WILL STOP THESE INJUSTICES?

1994 PROSECUTION. CASE NOS: 93-CF-648 AND 93-CF-649.

TARAWALY

Recipient Schneiter's, Claim No: 9022535347,
State loss $30.00, offense, 49.49
Recipient McCord, Claim No: 9022535554,
State loss $26.25, offense, 49.49
Recipient McNally, Claim No: 9022535323,
State loss $20.00, offense, 49.49
Recipient Bivens, Claim No: 9022535363,
State loss $18.75 offense, 49.49
Recipient Durni, Claim No: 9022535340,
State loss $23.75 offense, 49.49
Recipient Hart, Claim No: 9022535329
State loss $02.50 offense 49.49
Recipient Jordan, Claim No: 9022535546
State loss $16.25 offense 49.49

CORPORATION

Recipient Schneiter, Claim No: 9022535347
per claim $30.00 offense 49.49
Recipient Sydow, Claim No: 9218292821
per claim $136.00 offense 49.49
Recipient Anderson, Claim No:
State loss $42.50 offense 49.49
Recipient Anderson, Claim No:
per claim $42.50 offense 49.49
Recipient Sydow, Theft by fraud. 9 43.20.(d)

THE CIRVENTED VINDICTIVE 1996 PROSECUTION. CASE NOS; 96-CF-414 AND 96-CF-415.

The following shows the Count, Recipient, Amount, ICN number, Statute, Date filed, and who the count was against:

Count #1: Schneiter, $30.00, 3460, 49.49,
8.13.90,Tarawaly
Count #2: Schneiter, $30.00, 3460, 49.49,
8.13.90, Corporation
Count #3: McNally, $20.00, 3060, 49.49,
8.13.90, Tarawaly
Count #4: McNally, $20.00, 3060, 49.49,
8.13.90, Corporation
Count #5: McCord, $26.25, 2960, 49.49,
8.13.90, Tarawaly
Count #6: McCord, $26.25, 2960, 49.49,
8.13.90, Corporation
Count #7: Jordan, $16.25, 5450, 49.49,
8.13.90, Tarawaly
Count #8: Jordan, $16.25, 5450, 49.49,
8.13.90, Corporation
Count #9: Hart, $2.50, 5450, 49.49,
8.13.90, Tarawaly
Count #10: Hart, $2.50, 5450, 49.49,
8.13.90. Corporation
Count #11: Durni, $23.75, 3990, 49.49,
8.13.90, Tarawaly
Count #12: Durni, $23.75, 3990, 49.49,
8.13.90, Corporation
Count #13: Marlene Bivens, $18.75, 3650, 49.49,
8.13.90, Tarawaly
Count #14: Marlene Bivens, $18.75, 3650, 49.49,
8.13.90, Corporation
Count #15: Anderson, $42.00, 8140, 49.49,
2.18.92, Tarawaly
Count #16: Anderson, $42.00, 3110, 49.49,
12.27.91, Tarawaly
Count #17: Sydow, $135.00, 943.20(1)(d), Tarawaly
Count #18: Schneiter, $30.00, 3460, 943.20(1)(d) Tarawaly

Viewing both charts, Judge Shabaz unreservedly quoted Judge Moeser's absurd statement in revolt of the Blockburger

Test: "My issue today is whether these are different than what was dismissed, and my ruling is that they are different, that the State has charged separate crimes."

What determines separate crimes, Judge Shabaz, sorry to say, is not a vague ICN number, but a constitutional Statutory Element of Offense. Of course, the ICN numbers differentiate claims but not a match for a Blockburger Test that differentiates crimes. That is the difference here acceptable by the United States Supreme Court, therefore, the numbers provided by Shabaz were made by Moeser's court. The Petitioner's belief is that the Statutory Element of Offenses were passed by Congress. This is the main disagreement between the State and the Petitioner. Had Shabaz known this distinction he could not have denied Petitioner's petition on those superfluous "statement". What a joke; keep a man as a felon just by the statement, "my ruling is the State charged different crimes." The Statute 49.49 was used for all counts, so how can he say they were all different? As Justice Scalia clearly stated, "double jeopardy clause looks to whether offenses are the same, not to the interests that the offenses violate." U.S. v. Dixon, 113, S. Ct. 2849 (1993). Moeser's and Shabaz's power with prestige is not the issue here. The issue is how truthfully they interpret the law passed by Congress. Needless to say, if any Justice reads the Moeser/Shabaz's statements above, they might tend to assume they are correct simply because they are both Chief Judges. The fact is, one cannot prove the truth or falsity of a given statement just because it comes from an authority. It is not the prestige of an authority which makes a statement true or false, but rather the citing of EVIDENCE either to confirm or disprove the statement. Again, what constitutes evidence are facts which the authority produces, that is quite different from a mere verbal pronouncement from Judge Shabaz. Therefore, the statement is misleading because it is not evidentiary. Statistically the statutory element of offense between the 1994 prosecution and that of the 1996 is the same.

In the listing of cases above, there are only two Anderson's claims. Both were dismissed under Case No: 92-CF-1829. It was also dismissed in Case No: 93-CF-649 with prejudice. Even Hart's claim was dismissed with prejudice. Yet it is well alive in the Moeser's Court. And here Chief Shabaz misled the Federal Court of Appeals that his order was credible, therefore, Petitioner's Certificate of Appealability was denied.

Chief Judge Shabaz, who could not preclude defending Chief Judge Daniel Moeser, stressed this flattery argument:

> "Petitioner submitted numerous claims for medical assistance for transportation of individuals. Each individual claim submitted which contained a false statement was a separate offense of medical assistance fraud. Each offense required proof of a fact that the other did not; the submission of that claim on that certain date for that specific payment." (See Shabaz's order in Appendix.)

Asserting that each claim is a separate offense is meaningless because Mr. Shabaz failed to show the contrast. Furthermore, to say, "...the submission of that claim..." we may ask, which one Sir, show the Court to authenticate it. "...on that certain date, for that specific payment..." we may ask which date and which payment is he referring to? Judge Shabaz, is playing with empty words here to justify Petitioner being a felon. If Shabaz had the facts, why did he not give the Court the specific date, payment, etc., rather than bothering a sick man with vulgarity? Law is an empirical science. One either takes it as defined or leaves it. It has nothing to do with psychology. Since the burden of proof lies in the State, Shabaz should have questioned the State about those dates before denying Petitioner's claim.

Besides, Shabaz's use of word, "numerous" perhaps hinges on Schneiter's and Sydow's claims. The State

allegedly stated that the corporation transported Sydow for 131 days. But see how the State brought those days to a single unit to form its restitution:

> "Between December 26, 1991 and May 30, 1992, Tejan Tarawaly submitted claims .....for recipient Barbara Sydow on 131 days.....and paid $38,383.44.....Defendant was entitled to reimbursement by the Medicaid program of a total of $29,971.00 for those 131 days.....But the Medicaid program paid Tarawaly $8,411.52 to which he was not entitled."

For double jeopardy purposes Sydow's single unit of rides was dismissed by the Honorable O'Brian's Court. The said unit of $8,411.52 was dismissed by Judge Jones' with prejudice. If the State respects its own word and law upholding the Blockburger Test, then that should have been the end of the Sydow's claims. Also consider Schneiter's 198 claims that were legally approved. The claims were legally authorized by Ms. Stutika, head of the Agency that controls the Medicaid program. The claims are also verified and paid:

> "Ms. Stutika: the correspondent actually takes the phone calls the providers make when they are having problems with their billing or they want additional information or they want to know what their claims status is, anything having to do with Medicaid program. The correspondents then are trained to resolve those questions and those problems. The provider gets paid by first of all doing the service and submitting the claim form to EDS. And then the claim goes through our system, goes through some checks and balances. If that claim is completed correctly, a check then is generated to the provider for

the services he's provided." Page 71, 6/20/96 transcript.

Petitioner simply brought the above quotation in because when some people see 131 days and 198 days, perhaps they think the number of days is inflated, when in fact they were fully authorized.

> "Between July 2, 1990, and May 30, 1992, Tejan Tarawaly submitted claims .....for recipient Schneiter on 198 days.....and was paid $19,517.53. Tarawaly was paid $4,285.39 to which he was not entitled.

For the purposes of double jeopardy, Schneiter's unit of $4,285.39 claims was dismissed by Judge O'Brian. The said the unit was dismissed by Judge Jones' with prejudice. If the Court could not uphold its own word and law, it can be understood why it retrieved those duplicated claims due to abuse of power. This is the case with all other recipients; whether or not the prosecution shifted from Corporation to Tarawaly is immaterial.

Payments were allegedly made to the corporation. Tarawaly was an employee of the Corporation. If the corporation was set free of the $250,000 in a court of justice, would one turn around and sue the employee with the said charges and offense, Sir? Petitioner does not think it so. But considering the unlimited powers of the Chief Judge, it is possible, one never knows.

Hypocritically, the State of Wisconsin, which briefed the Jones' Court to dismiss all charges against Defendant, turned around and duplicated all recipients and their charges for the unjust 1996 prosecution.

Here are the three courts:

SUED FOR $256,377.17
Element of offense of dismissed Case No: 92-CF-1829
49.49(1)(b)
Element of offense of dismissed T/Fraud 92-CF-1825
943.20(1)(d)

SUED FOR $250,000
Element of offense of dismissed with prejudice
Case No: 93-CF-64849.49(1)(b)
Element of offense of dismissed with prejudice
Case No: 93-CF-649 943.20(1)(d)

GUILTY. SUED FOR $2,500
Element of offense of circumvented
Case No: 96CF414 49.49(1)(b)
Element of offense of circumvented
Case No: 96CF415 943.20.(1)(d)

Common sense DICTATES that if both the dismissed cases were each over $250,000 but the third case that landed Petitioner in prison was only for $2,500, does it not tell the Court that in fact there was no case to begin with? What is the reason for the persistent inconsistencies, over $256,000, over $250,000 and $2,500 along with duplicating names and the like? Mr. Moeser's power created the 1996 case for nothing. Therefore, the 1994 case definitely barred the reproduction of the 1996 case. The principle of the Blockburger Test follows:

(a) "The Blockburger Test determines whether multiple prosecution for a single act constitutes prosecution for the same offense. Double jeopardy bars subsequent prosecution for a single act unless the act can be presented and punished under the different statutory provision that requires proof of different elements." If

this is the case, then Case Nos. 1 and 2 bar Case No. 3 because...:

(b) "The test is not whether the Defendant has been tried for the same act, but whether he has been put in jeopardy twice for the same offense." If this is the case, then the same offenses Case Nos. 1 and 2 are the same as Case No. 3.

(c) "Neither can the State prosecute an offense whose elements are incorporated into the elements of offense already prosecuted." If this is true, then the elements in cases 1 and 2 are incorporated in Case No. 3, which could not have been reproduced. State v. Kurzawa 509 N.W. 2d 712 (1994).

Almost all leading Justices that the Petitioner has uncovered are opposed to multiple prosecutions unless contrary to the Blockburger Test. For instance, Justice Stewart, in Benton v. Maryland, 395, U.S. 784, 89, S. Ct. 2056 states the Fifth and Fourteenth Amendment are enforceable against the State to honor the double jeopardy clause. This position is held in U.S. v. Oppenheimer, 242, U.S. 85, 37 S. CT 68. Justice Black, Justice Harlan, Justice Marshall, Justice Frankfutter, "double jeopardy doctrine is part of the protection of the Constitution against pressures and penalty that offend civilized notion of justice." Marcus v. Hess, 317 U.S. 337, 555 (1943), Justice Scalia, "double jeopardy clause looks to whether offenses are the same, not to the interests that the offenses violate." U.S. v. Dixon.

3. GIVEN THE ABOVE, THE WRIT SHOULD BE GRANTED BECAUSE IT IS WHOLLY AND SOLELY THE RESPONSIBILITY OF THE SUPREME COURT OF THE UNITED STATES TO SEE THAT LAW AND ORDER ARE RESPECTED. AS JUSTICE STEWARD DELIVERED IN BENTON V. MARYLAND, 395 U.S. 784, 89 S. CT. 2056, "THE FIFTH AMENDMENT

GUARANTEE AGAINST DOUBLE JEOPARDY IS ENFORCEABLE AGAINST THE STATES THROUGH THE FOURTEENTH AMENDMENT."

Because the truth shall lead us free, the State flatly told Judge Shabaz in it's response:

> "In the 1994 and 1996 prosecution, the State charged the Petitioner under the same statute. ..... In the 1994 prosecution, the State charged the corporation with obtaining over $250,000 by submitting claims based on allegedly fraudulent prescriptions for transportation service. In the 1996 prosecution, the State charged the Petitioner with two counts of theft by fraud, asserting that he knowingly submitted claims for payment for mileage that he knew to be inflated. Thus, the facts underlying each charge are completely different."

The State truthfully admitted that the "1994 and 1996 charges were based on the same statute." The burning question is, why did Mr. Shabaz dismiss the petition with prejudice disregarding the Blockburger Test? Did he understand the Blockburger Test? If yes, why for God's sake did he side with the State? It remains to be seen. Petitioner is confident that Chief Judge Shabaz has not already been indoctrinated in this belief: "Double jeopardy jurisprudence is an important area of law where State courts have special responsibility, especially in Wisconsin where the interpretations of the federal constitution do not seem to meet our needs." North Western Reporter, 2d. Series, page 509. This certainly begs the question, why cannot law be unified to eradicate the massive existing injustices?

The Court may very well see how each recipient count was unjustly duplicated and applied to both Tarawaly and his corporation. To prove that the 1996 prosecution was barred, let us hear from the Honorable Judge Curtin, who presided over the case for three days:

"Very frankly, there are nine counts charging Mr. Tarawaly with Medical Assistance fraud. In each instance as I have reviewed it, the charge is identical. In other words, it is a different control number; it may be a different individual that received the services. Frankly, I'm not going to sit here and read five pages of identically the same thing. I had trouble figuring it out myself in chambers, much less having me read to you four pages. So the first nine counts of the information are identical, except as I say for the ICN number and the recipient of the services. The statute is the same and the charges are the same. In other words, basically it's the individual who's ineligible for transportation services or otherwise was transported perhaps for longer distance than was required. At least that's the gist of it."

Moeser and Shabaz only understood a fragment of the case because they only read a few hand out pages. Judge Curtin, on the other hand, studied the case very well. Judge Curtin spoke the truth perhaps not in the interest of Moeser's Court. If Judge Curtin did not understand the indictment himself, then how could the jury understand it?

Judge Curtin was correct in positing the obscurity of the State's Information Sheet because as Justice Milton observes the Federal Rules, "indictment shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." U.S. v. Debrow 346 U.S. 374, 376 (1953). On the same record, Chief Justice Arthur T. Vanderbilt of New Jersey Supreme Court warns, "There is no more important right in the law than the right to a fair trial, for without a fair trial, all the rights vouchsafed by the substantive law are worthless." The Role of Procedure in the Protection of Freedom, University of Chicago Law School, "Conference of Law", May 7, 1953.

The only way the charges would satisfy the Blockburger Test is when they are based on the statutory elements of

offense. Thus, "Under Blockburger same elements test, successive prosecution for theft by fraud and uttering forged instrument would not violate double jeopardy, because each offense required proof of element which other did not." This means, Sir, Dr. Becks checks carries 943.20(1)(d) and that of Mrs. Becks 943.38(2). They are independent of each other, but not 49.49 and 49.49. Again why would there be multiple prosecution when they were all filed on August 13, 1990? But in Dr. Beck's and his wife's case, they are two different offenses. There were no check numbers paraded to show the difference between one crime from the other. Kurzawa committed both crimes. This is why the United States Supreme Court approves the Blockburger Test, to differentiate between one crime and the other.

Undoubtedly, the double jeopardy clause protects, "Against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and protects against multiple punishment for the same offense." State v. Kurzawa. It can be understood why both the Wisconsin Court of Appeals and the Wisconsin Supreme Court ignored Petitioner's claim of double jeopardy, for fear of embarrassment.

> Furthermore, as Justice Douglas once said, "the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The double jeopardy doctrine is part of the protection of the constitution against pressures and penalties that offend civilized notions of justice. It has been said that the great principle forms one of the strong bulwarks of liberty, without which the guilty would be subjected to the unnecessary cost and vexations of repeated prosecutions, and the innocent to the danger of erroneous convictions. For without salutary rules, one obnoxious to the government might be harassed and run down by repeated attempts to carry on a prosecution against him. The principle

is founded in the humanity of the law, and in a jealous watchfulness over the rights of the citizen, which is so necessary because of the inequality of the parties in a criminal case." Marcus v. Hess.

Mr. Shabaz also defended the State by saying:

"The State trial Court correctly determined that the 1996 charges against Petitioner were for offenses which required proof of facts not required for the offenses for which Petitioner was charged in 1996." Shabaz's order. (See Appendix).

Who can make sense out of Shabaz's own writing by contrasting 1996 charges with the same 1996 charges? Technically, the Supreme Court should overturn this case, for this was the inappropriate contrasting that got the Petitioner thrown in prison.

Many people seem to be confused over closely related offenses, including Prosecutor Colas and his two judges, Moeser and Shabaz. Thus, where a man has, with one act, say "mileage", committed closely related offenses defined by different STATUTES, he can be prosecuted, NOT BY ONE 49.49.(1)(B) Statute IN THREE DIFFERENT COURTS. The rule is, "There is no double jeopardy if the second statute requires of an addition fact which the other does not." What does it mean? The sentence looks simple but catchy.

In the Petitioner's indictment, there are no closely related offenses that warrant multiple prosecution. If the court looks at his case listings on page 12, Schneiter count 1 was placed on 49.49(1)(b) and the same Schneiter count 10 was placed on 943.20(1)(d) theft by fraud. The question before this Honorable Court is, if Schneiter's single claim as Judge Shabaz numbered, 249890225353460 can be used for two counts which factual basis is $30.00, does that not mean he was misleading the courts? Same with the Sydow's claim which the Prosecutor brought in a single unit under the O'Brian and Jones court, which were dismissed with prejudice. Truthfully, a single Schneiter's claim count 10

cannot produce $4,185.29 by itself, nor can a single Sydow's claim count 11 produce $8,411.52, if Prosecutor Juan Colas did not blend all the claims serviced between February 1990 and May, 1992 together, again which were dismissed by the Honorable Judge O'Brian's and Jones' court in the sum of $256,000. Where did the Prosecutor get the so called $12,918.41? Is this a credible Prosecutor before God and your conscience? Did the State in fact have a case at all after the Jones' trial? It did not. Let us now hear from this Prosecutor, who was duplicating all recipients, repeating the same statutes, defeated in two courts of justice, with three different kinds of restitution, $256,000, $250,000 and $12,918.41, bluffing with empty words before the Honorable Judge Robert Curtin during sentencing:

> "The State is recommending as a total sentence that he serves seven years in prison, that he be fined $50,000, that investigative costs of $20,000 be assessed against him, that he makes restitution of $12,918.41 and that his company also be fined $50,000. My recommendation to the court as for distribution of this with respect to Mr. Tarawaly would be that on counts one through nine, he be placed on probation for ten years, consecutive to the sentences that we'll request on counts ten and eleven...", which are Schneiter's and Sydow's counts, "...we would recommend that on count ten, the sentence be withheld and he be placed on probation concurrent with the other terms of probation. And that as to count ten, he be assessed $8,411.52 in restitution. As could to count 11, we recommend seven years imprisonment and restitution of $4,185.29." Page 8 of the Sentencing transcript.

Considering Schneiter's counts one and ten, and Sydow's counts one and eleven, Petitioner does not believe that driving them to and from clinics constitutes a lesser and

greater offense, because they fall under the same statute 49.49(1)(b).

To illustrate, let's suppose that someone was transporting Schneiter, sold him cocaine, bought illicit guns, and had an accident on the way and fled the scene. The rule is that each incident has to have a separate statutory offense. This is the catch. For example, say the driver was convicted of insulting a police officer. He might also be tried for disorderly conduct, though both prosecutions arose from the same act. Gavierces v. United States, 220 U.S. 338 (1911). Here is another catch; if the basic facts are the same, either acquittal or conviction, a second prosecution is barred. Scalfon v. United States, 332 U.S. 575 (1948). My conviction was based on mileage and not even on prescriptions, as Prosecutor misrepresented in court. He cannot prove it.

With respect to the Certificate of Appealability, Judge Shabaz could have issued it based on the following:

> "On 28 §2253, 181, should the Habeas Corpus applicant whose petition was denied, give timely notice of an appeal, he may proceed on appeal in forma pauperis without further authorization and any notice of appeal would be treated as a motion for certificate of probable cause, and in the event the court's memorandum opinion and order would be construed as such certificate." Huffman v. Moore, D.C. Tenn. 1971, 333 P. Supp. 1315. But Judge Shabaz refused to issue the certificate until Petitioner offered any, "argument not cumulative of that already provided to undermine this Court's conclusion that his petition must be dismissed. Accordingly his request to proceed in forma pauperis on appeal will not be granted at this time. It is ordered that Petitioner's request for a Certificate of Appealability is DENIED. It is ORDERED that Petitioner's request to proceed in forma pauperis on appeal is

WITHHELD until May 21, 1999." (See Shabaz's order, May 3, 1999, in Appendix).

Disappointingly, what political power or influence does the Petitioner have to undermine Judge Shabaz's court? Petitioner has none. For Shabaz to say that Petitioner should offer a new argument other than the previous one, the Petitioner had nothing to offer, apart from the Statutory Element of Offense, based on the Blockburger Test already given. All the Petitioner is trying to accomplish here is to seek justice, but not to undermine him.

Justice Brandeis, in the "Olmstead Case", warns law enforcement officials:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means... to declare that the government may commit crimes in order to secure the conviction of a private criminal would be a terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

CONCLUSION

In the light of the foregoing, as Chief Justice Hughes says, "It must never be forgotten that the writ of Habeas Corpus is the precious safeguard of personal liberty and there

is no higher duty than to maintain it unimpaired..." Bowen v. Johnston, 306 U.S. 19, 39.

Considering his age, his crippled knees, his business that was closed down by the State, placed on a $100,000 bond for a $10,000 restitution, $20,000 administrative cost, 10 years probation and harassment, the sole reason Fifth and Fourteenth Amendment double jeopardy clause prohibits. He prays that the United States Supreme Court should overturn his conviction or accord him a hearing, especially when this High Court should "lean over backwards to give the Petitioners a hearing, since prisoners who are unlearned in the law and unfamiliar with the complicated rules of pleading them, act as their own counsel in Habeas Corpus proceedings." Price v. Johnson, 334 U.S. 266 (1948). This is so because this Honorable Court "has a special obligation to administer justice impartially and to set an example of impartiality for other courts to emulate. If the Court appears to favor the government over the ordinary litigants, it seriously compromises its ability to discharge that important duty." U.S. v. Williams 112 S. Ct. 1735 (1992).

Petitioner need not quote the opinions of current Justices to buttress his position, but simply rests his points in the hands of the Justices who took part in U.S. v. Dixon, and others.

Therefore, a Writ of Certiorari should issue to review both the decisions of the United States Court of Appeals and that of the District Court for the goodness of our System of Justice.

Dated at Milwaukee, Wisconsin,
on this 30th day of May, 2000.

Respectfully Submitted,

Tejan Tarawaly,
P.O. Box 100974
Milwaukee, WI 53210

APPENDIX

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 3, 2000
Decided January 12, 2000

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge

No. 99-2141

TEJAN TARAWALY, *Petitioner – Appellant,*	Appeal from the United States District Court for the Western District of Wisconsin.
v.	
	No. 99-C-96-S
CATHERINE J. FARREY, *Respondent – Appellee.*	John C. Shabaz, *Chief Judge*

ORDER

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The district court denied the petition and declined to issue a certificate of appealability. Petitioner now has filed an application for a certificate of appealability with this court.

This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253 (c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEJAN TARAWALY,
Petitioner, MEMORANDUM and ORDER

v. 99-C-96-S

CATHERINE J. FARREY,
Respondent.

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 contending that he was subjected to double jeopardy. Respondent filed a response on March 19, 1999 and petitioner filed his traverse on April 22, 1999.

FACTS

In 1996 petitioner Tejan Tarawaly was charged with nine counts of Medical Assistance Fraud for making false statements on applications for medical assistance payments for transportation. (Claim Nos. 249890225353460, 249890225353060, 249890225353960, 249890225355450, 249890225354370, 249890225353990, 249890225353650, 241392049028140 and 241391361093110). He was also charged with two counts of theft by fraud.

At petitioner's motion hearing and arraignment on May 16, 1996 he moved for dismissal of the charges on the ground that they violated his constitutional right to be free from double jeopardy. In 1994 petitioner had been charged with seven counts of medicaid assistance fraud which were dismissed with prejudice. (Claim Nos. 249890225353470, 249890225355540, 249890225353230, 249890225353630, 249890225354090, 249890225355290, 249890225355460).

The trial court denied petitioner's motion to dismiss stating as follows at P.10, State's Exhibit E:

My issue today is whether these are different than what was dismissed, and my ruling is that they are different, that the state has charged separate crimes.

On June 21, 1996 after a jury trial petitioner was convicted of nine counts of medical assistance fraud and two counts of theft by fraud. He was sentenced to a total of eight years in prison and placed on two ten-year probation terms concurrent to each other but consecutive to his prison sentence. Petitioner has exhausted his state court remedies.

MEMORANDUM

Petitioner claims that his 1996 convictions violated his constitutional protection against double jeopardy because the same charges were dismissed in 1994.

A federal court may grant relief on the petition for a writ of habeas corpus of a person in state custody only if the state court's adjudication of the claim was on the merits and:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

28 U.S.C. § 2254 (d) (1) and (2).

The state trial court determined that the 1996 charges against petitioner were different than those dismissed in 1994, and that petitioner was not subjected to double jeopardy.

The Fifth Amendment of the United States Constitution prohibits placing a defendant twice in jeopardy for the same charges. In Blockburger v. United States, 284 U.S. 299, 304 (1932), the Court held that to determine whether a second

offense violates the double jeopardy clause the Court must determine whether it requires proof of a fact which the first offense does not.

The state trial court correctly determined that the 1996 charges against petitioner were for offenses for which petitioner was charged in 1996. Petitioner submitted numerous claims for medical assistance for transportation of individuals. Each individual claim submitted which contained a false statement was a separate offense of Medical Assistance Fraud. Each offense required proof of a fact that the other did not: the submission of that claim on that certain date for that specific payment. Each offense of submitting a false statement was a separate offense.

Petitioner was charged in 1996 with different offenses than the offenses charged in 1994 and was not subjected to double jeopardy in 1996. The determination of the state trial court was neither contrary to clearly established law nor an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

Petitioner's convictions are constitutional and his petition for a writ of habeas corpus will be dismissed with prejudice.

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 23rd day of April, 1999.

BY THE COURT:

s/_____
JOHN C. SHABAZ
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEJAN TARAWALY,
Petitioner,

ORDER

v.

99-C-096-S

CATHERINE J. FARREY,
Respondent.

On April 27, 1999 judgment was entered in the above entitled matter dismissing petitioner's petition for a writ of habeas corpus with prejudice. On April 30, 1999 petitioner filed a notice of appeal. The Court construes this as a request to proceed in forma pauperis on appeal and for a certificate of appealability. A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. The adjudication of petitioner's double jeopardy claim by the state trial court was consistent with federal law and a reasonable determination of the facts in light of the evidence. Petitioner has not shown the denial of a constitutional right. Accordingly, his request for a certificate of appealability will be denied.

In Newlin v. Helman, 123, F.3d 429, 433 (7th Cir. 1997) the United States Court of Appeals discussed the determination of whether an appeal is taken in bad faith as follows:

> Frivolousness is an objective inquiry; "good faith" implies a subjective standard. But judges lack access to the plaintiff's mental processes. Thoughts must be inferred from acts. A plaintiff who has been told that the claim is foreclosed and then files a notice of appeal without offering any argument to undermine the district court's conclusion is acting in bad faith.

On April 23, 1999 petitioner's petition for a writ of habeas corpus was dismissed with prejudice because the Court found that the state trial court's determination that petitioner was not subjected to double jeopardy was neither contrary to clearly established law nor an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

In his notice of appeal petitioner argues that the Court did not follow the Blockburger test. The Court, however, used the Blockburger test to find at page 4 of its decision that each offense required proof of a fact that the other did not; the submission of that claim on that certain date for that specific payment. Petitioner has until May 21, 1999 to offer any argument not cumulative of that already provided to undermine this Court's conclusion that his petition must be dismissed. Accordingly, his request to proceed in forma pauperis on appeal will not be granted at this time.

ORDER

IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED.

IT IS ORDERED that petitioner's request to proceed in forma pauperis on appeal is WITHHELD until May 21, 1999.

Entered this 3rd day of May, 1999.

BY THE COURT:

s/_____
JOHN C. SHABAZ
District Judge